

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board)	CC Docket No. 96-45
on Universal Service)	
)	

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

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SUMMARY

The current High-Cost support system is unsustainable. Under the present framework, many rural local exchange carriers (“rural LECs”) receive support payments that are based on “rate of return” regulation that discourages innovation that could offer customers in many rural and High-Cost areas better service at lower prices. Furthermore, the administrative complexity of the system creates a substantial incentive to “game” the system and overspend. The net result is a system that rewards certain carriers with ever-increasing High-Cost support payments – at the expense of consumers. The time has come for a fundamental change. To this end, Nextel urges the Joint Board to undertake a comprehensive reexamination of the High-Cost support mechanisms in this proceeding, and recommend reforms that will both rationalize and stabilize the High-Cost fund.

In the Notice, the Joint Board requests comment on potential methods to determine universal service support in rural areas after the expiration of the Rural Task Force plan on June 30, 2006. Nextel believes that a key component of any simplified, competitively neutral methodology is a forward-looking cost methodology. Nextel realizes, however, that the development of a completely new framework may go beyond the expiration date of the Rural Task Force plan. Accordingly – as a transitional step – Nextel supports a short-term proposal whereby all carriers with more than 50,000 lines in a study area or more than 100,000 lines in a single state would transition to a forward-looking cost model when the Rural Task Force plan expires, while establishing a longer term phased in approach for the smallest rural LECs. As a component of this plan, Nextel also urges the Joint Board to modify the High-Cost loop support for any carriers

not transitioning to a forward-looking cost methodology to a lower benchmark support level that encourages economically efficient behavior.

As part of this short-term plan, the Joint Board should also recommend substantial changes to the Commission's rules governing recovery of "corporate operations expenses" and local switching support. In order to ensure that High-Cost support is being used to directly advance the nine core services for which Universal Service support is intended, Nextel urges the Joint Board to recommend either the elimination or substantial reduction in the recovery of "corporate operations expenses" in the calculation of loop costs. Nextel also urges the Joint Board to recommend that the Commission lower the threshold for receiving local switching support from the current level of 50,000 lines in a study area to no higher than 25,000 lines in a study area to eliminate arbitrage opportunities by certain LECs that do not have higher than average switching costs.

Nextel also urges the Joint Board to begin formulation of a long-term plan to replace the above measures, which are intended as transitional measures only. Key components of such a plan should include transitioning all remaining incumbent LECs to a unified forward-looking mechanism as soon as possible. In addition, Nextel also supports efforts by the Joint Board to study the possibility of developing a High-Cost subsidy that flows directly to the consumer. Under this option, a consumer would receive a set amount of funds, and would be able to pick the Eligible Telecommunications Carrier ("ETC") in an area that offers the most efficient and cost-effective package of supported services.

Finally, Nextel requests that the Joint Board recommend a slight modification of the definition of "rural" for Universal Service support purposes. Statistics cited in the

Joint Board's Notice indicate that a number of carriers with non-rural characteristics are self-certifying as "rural" carriers pursuant to the "rural" definition provision that mirrors Section 3(37)(D) of the Communications Act. Accordingly, Nextel believes that the Joint Board should recommend that the Commission remove the subsection that mirrors Section 3(37)(D) of the Act from the Commission's rule governing which carriers are considered "rural" for the purpose of receiving High-Cost support.

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Nextel Communications, Inc. (“Nextel”) hereby submits these comments in response to the Federal-State Joint Board on Universal Service’s (“Joint Board”) Public Notice (“Notice”) requesting comment on the Federal Communications Commission’s (“Commission”) rules relating to the provision of High-Cost Universal Service support.¹ Specifically, the Notice requests comment on a mechanism to replace the “five year plan” adopted in the Rural Task Force Order, including possible revisions to the cost methodology used for rural carriers. In addition, the Joint Board’s Notice also seeks comment on the definition of “rural telephone company” for High-Cost Universal Service support purposes, as well as proposals to consolidate multiple study areas within a state.

The current High-Cost support system is unsustainable. Under the present framework, many rural local exchange carriers (“rural LECs”) receive support payments that are based on “rate of return” regulation, which discourages innovation that could offer customers in many rural and High-Cost areas better service at lower costs. Furthermore, the administrative complexity of the system creates a substantial incentive to overspend. The net result is a system that rewards certain carriers with ever-increasing

¹ See *Public Notice, Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support*, FCC 04J-2, CC Docket No. 96-45 (rel. Aug. 16, 2004) (hereinafter “Joint Board Notice” or “Notice”).

High-Cost support payments – at the expense of consumers. The time has come for fundamental change. Accordingly, Nextel urges the Joint Board to undertake a comprehensive reexamination of the High-Cost support mechanisms in this proceeding, and recommend reforms that will both rationalize and stabilize the High-Cost fund.

I. INTRODUCTION AND BACKGROUND

Nextel is the Nation's sixth largest provider of Commercial Mobile Radio Service ("CMRS"), including cellular telephone service, Direct Connect® (Nextel's walkie-talkie feature) and data services. Nextel covers 294 of the top 300 metropolitan areas in the United States, and currently serves over 13 million customers. Unlike a number of other wireless carriers, Nextel has not received designation as an Eligible Telecommunications Carrier ("ETC") in any state, and does not currently receive any High-Cost support.

Nextel does, however, make substantial contributions to the USF as a telecommunications carrier that provides interstate and international services. To that end, Nextel is extremely concerned about the growth of the USF and, in particular, the High-Cost portion of the Fund.

As the Joint Board is undoubtedly already aware, the increasing demand on USF funds, combined with the failure to expand the contribution base to new sources – such as broadband – has led to a growing disproportionate burden on carriers, such as Nextel, that operate in highly competitive environments, and the consumers that Nextel serves.

Should this burden continue to increase, the costs associated with the USF assessment will only dampen consumer demand for services, and retard innovation and competition in the marketplace. Unlike other participants in this proceeding that are largely concerned with either maintaining or expanding the amount of support that they receive

from the High-Cost fund, Nextel offers a unique perspective that is solely focused on formulating competitively-neutral measures to ensure that narrowly-targeted High-Cost support is made available to consumers who need it, while preventing excessive High-Cost fund growth that is driving the USF to unsustainable levels. Stated differently, Nextel is a good proxy for most consumers, who contribute to the USF but who receive no direct benefit from it.

II. THE CURRENT HIGH-COST SUPPORT MECHANISMS HARM CONSUMERS BY REWARDING INEFFICIENCY AND ALLOWING CARRIERS TO “GAME” THE SYSTEM DUE TO ADMINISTRATIVE COMPLEXITY

In the Notice, the Joint Board “requests comment on the method that should be used to determine the costs associated with serving a particular area for the purpose of the rural support mechanism.”² The Notice notes that the *Rural Task Force Order* retained a “modified embedded cost mechanism,” and requests specific comment on “whether a rural support mechanism that bases support on forward-looking cost estimates or on embedded costs more efficiently and effectively achieves the Act’s goals.”³ Nextel strongly believes that the current system – which continues to rely on embedded costs and “rate of return” regulation – must be changed to ensure that High-Cost support is narrowly targeted to those consumers who actually need it, rather than just distributed to carriers based on old regulatory paradigms that have no place in today’s increasingly competitive telecommunications marketplace.

Under the current system of High-Cost support, many rural LECs continue to receive High-Cost support payments that are based on “rate of return” regulation, which

² Notice at 8, ¶ 20.

³ *Id.* at 8, ¶ 21.

essentially means that rural LECs will receive government-guaranteed profits of 11.25% from the USF.⁴ In addition, the 11.25% profit guaranteed by the separations rules (contained in Part 36 of the Commission's rules) allows carriers to recover a number of items, such as "corporate operations expenses," that are not directly related to the actual provision of service to consumers.⁵ The net result is a system that actually encourages many rural carriers to operate inefficiently and inflate their costs to receive higher support payments from the High-Cost fund.

In the present highly competitive wireless telecommunications market, this harms carriers – such as Nextel – that receive no High-Cost support and, ultimately, consumers. First, it gives carriers receiving High-Cost support an advantage over other similarly situated carriers that receive no support. While carriers that receive no support are required to adjust their operations expenses to constantly changing market forces, carriers receiving High-Cost support based on embedded costs are able to bury inefficiencies in their cost models, and receive additional USF support for such inefficient behavior. In addition, the continuing use of a "rate of return" embedded cost model causes the overall USF contribution factor to increase, harming consumers who utilize carriers that do not receive High-Cost support, and diminishing demand for new and innovative telecommunications services.

The problems of using an embedded cost formula are further amplified by the administrative complexity of the High-Cost support mechanism, which allows certain

⁴ See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent LEC and IXC's, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166*, 16 FCC Rcd 19613, 19700-02 (2001) (hereinafter "MAG Order").

⁵ See, e.g., 47 C.F.R. § 36.101 *et seq.*

entities to “game” the system. Currently, the High-Cost support system is composed of five mechanisms: 1) high-cost loop support;⁶ 2) local switching support;⁷ 3) interstate common line support;⁸ 4) forward-looking support;⁹ and 5) interstate access support.¹⁰ Support calculations under all of these mechanisms, however, rely on extremely complicated administrative rules and cost accounting practices that allow for certain carriers to receive support that is not economically justifiable. For instance, the Commission’s rules currently limit local switching support to rural LECs that have less than 50,000 lines in a study area.¹¹ However, a number of carriers – and particularly those who have acquired exchanges – have multiple study areas within a single state. Often, these exchanges were acquired from other carriers, and have not been consolidated into larger or statewide study areas. Therefore, these carriers can essentially engage in regulatory arbitrage by staying just below the 50,000 line limit in each study area, even though they may have hundreds of thousands of lines throughout the entire state, and hardly qualify as a “small” carrier for which this type of support was intended.

In the *Rural Task Force Order*, which was released in 2001, the Commission noted many of the problems with the current embedded cost methodology and associated support mechanisms, stated that it would soon initiate a “comprehensive review of the

⁶ See 47 C.F.R. § 36.601 *et seq.*

⁷ See 47 C.F.R. § 54.301.

⁸ See 47 C.F.R. § 54.901 *et seq.*

⁹ See 47 C.F.R. § 54.309.

¹⁰ See 47 C.F.R. § 54.800 *et seq.*

¹¹ See 47 C.F.R. § 54.301 (a).

high-cost mechanisms for rural and non-rural carriers as a whole,” and noted that in that proceeding it would “consider all options, including the use of forward-looking costs, to determine appropriate support levels for both rural and non-rural carriers.”¹² In light of the serious problems with the current support mechanisms, and the pending expiration of the “five year plan” contained in the *Rural Task Force Order*, the time has come for the Joint Board to recommend comprehensive reforms to the High-Cost support mechanisms.

III. THE JOINT BOARD SHOULD RECOMMEND SUBSTANTIAL CHANGES TO THE HIGH-COST SUPPORT MECHANISMS THAT CAN BE IMPLEMENTED UPON EXPIRATION OF THE RURAL TASK FORCE PLAN

In the Notice, the Joint Board requests comment on “how to determine universal service support in areas served by rural carriers after the end of the Rural Task Force plan on June 30, 2006.”¹³ Specifically, the Joint Board requests comment on “whether forward-looking economic cost estimates, embedded costs, or some other method of determining costs should be used for rural carriers.”¹⁴ As stated previously, Nextel strongly believes that the Joint Board must move towards a simplified, competitively neutral methodology that is sustainable and based on forward-looking costs. Nextel realizes, however, that development of a completely new framework may go beyond the July 1, 2006, expiration date of the Rural Task Force plan. Accordingly, Nextel strongly urges the Joint Board to recommend adoption of the following short-term proposal, which begins the process of transitioning to a simplified, competitively neutral High-Cost

¹² *Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256*, 16 FCC Rcd 11244, 11310 (2001) (hereinafter “Rural Task Force Order”).

¹³ Notice at 7, ¶ 18.

¹⁴ *Id.*

support mechanism and fixes many of the imminent problems with the current methodology, while allowing the Joint Board and Commission additional time to undertake the research and modeling necessary to convert to a complete forward-looking High-Cost methodology.

A. Cost-Basis of Support

1. The Joint Board Should Recommend Transition of All Carriers With More Than 50,000 Lines in a Study Area or More Than 100,000 Lines in a State to a Forward-Looking Cost Methodology

As the Commission has noted on a number of occasions, a forward-looking cost methodology is preferable to an embedded cost methodology in a competitive market because it provides appropriate and necessary signals for investment, entry and innovation in telecommunications markets.¹⁵ The transition to a forward-looking model, however, has been hampered – most recently in the *Rural Task Force Order* – by concerns that there is insufficient information to develop a forward-looking model that

¹⁵ See, e.g., *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8934-35 (1997) (hereinafter “First Report and Order”).

We find that the current support mechanisms neither ensure that ILECs are operating efficiently nor encourage them to do so. Indeed, by guaranteeing carriers recovery of 100 percent of all loop costs in excess of 150 percent of the national average loop cost, the current high-cost funding mechanisms effectively discourage efficiency. . . . We conclude that basing support on forward-looking economic cost or perhaps competitive bidding will require telecommunications carriers to operate efficiently and will facilitate the move to competition in all telecommunications markets.

Id. See also *Review of the Commission’s Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Services by Incumbent Local Exchange Carriers, Notice of Proposed Rulemaking*, 18 FCC Rcd 18945, 18958 (2003) (noting, in the context of pricing for unbundled network elements, that “[a]s many economist have noted, it is forward-looking costs, not historical costs, that are relevant in setting prices in competitive markets”).

can gauge costs in rural areas. Much of this concern has been based on concerns over using “input values designed for non-rural carriers to determine support for rural carriers.”¹⁶ In the *Rural Task Force Order*, however, the Commission also observed that “some of the data seem to show that some rural companies may be more similar to non-rural companies than to smaller rural companies.” In fact, the *Rural Task Force Recommendation* even noted that some of the larger rural carriers have average total plant investment per line costs that are lower than that of many non-rural carriers.¹⁷

While Nextel believes that many of these potential modeling problems are overstated, Nextel also believes that any potential harms could be alleviated by transitioning all LECs with over 50,000 supported lines in a study area, or 100,000 lines in a state, to a forward looking cost methodology, while establishing a longer term phased in approach for the smallest rural LECs. As the *Rural Task Force Recommendation* showed, many of the larger rural LECs have average per line costs and metrics that approximate those of non-rural LECs. Therefore, there should be little problem transitioning rural carriers with over 50,000 lines in a study area or 100,000 lines in a state to a forward-looking cost model.

¹⁶ Rural Task Force Order, 16 FCC Rcd at 11312.

¹⁷ See Letter from William R. Gillis, Chair, Rural Task Force, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-45, at 13 (filed September 29, 2004) (attaching “Rural Task Force Recommendation to the Federal State Joint Board on Universal Service”) (hereinafter “Rural Task Force Recommendation”). The *Rural Task Force Recommendation* noted that some of the largest rural carriers had average per line plant investment of approximately \$1,400, while some non-rural carriers had much higher average per line plant investment costs of \$4,350. See *id.* In addition, the *Rural Task Force Recommendation* also noted that “[a]verage Rural Carrier plant specific expenses increase consistently as the number of lines served decreases, from approximately \$110 per loop for carriers with more than 20,000 lines to \$445 per loop for carriers with study areas having less than 500 lines.” See *id.*

2. The High-Cost Loop Support Mechanism Should Be Modified For Any Rural Carriers That Continue to Utilize Embedded Costs

For those carriers that are not transitioned to a forward-looking cost methodology on the date the Rural Task Force plan expires (or if the Joint Board recommends the continued use of embedded costs for all rural carriers), the Joint Board should, at the very least, also reexamine the methodology used to calculate High-Cost loop support. Currently, rural carriers with 200,000 or less lines receive support at 65% of incremental costs above an amount equal to 115% of the national average unseparated loop cost. The High-Cost loop support program also provides support at 75% of incremental costs above an amount equal to 150% of the national average loop cost.¹⁸ As the Notice points out, however, the support percentage calculations have not been updated since the 1980s,¹⁹ and are now likely providing artificially inflated support in many rural areas that distorts economic signals and fails to provide any incentive for economically efficient behavior. Accordingly, Nextel believes that the loop support benchmarks should be lowered – for all carriers remaining under an embedded cost methodology – to a percentage that promotes more economically efficient behavior.

B. The Joint Board Should Recommend Modification of Section 36.621 of the Commission’s Rules to Eliminate or Substantially Limit Recovery of “Corporate Operations Expenses” In the Calculation of Study Area Loop Costs

Another way to realize substantial reform in the High-Cost support mechanisms is to eliminate disbursements for costs that are not directly related to the actual provision of

¹⁸ See 47 C.F.R. § 36.631(c).

¹⁹ See Notice at 14, ¶ 44, n.55 (noting that the support percentages “are based on Joint Board recommendations from the 1980’s that the Commission increase high-cost assistance for study areas with 200,000 lines or fewer and decrease assistance for larger study areas from previous levels”).

service in rural and high-cost areas. Pursuant to Section 214(e)(1)(A) of the Communications Act, as amended (the “Act”) and Section 54.101(a) of the Commission’s rules, carriers are required to use Universal Service Funds for the provision of the nine core services designated for support by the Commission.²⁰ However, Section 36.621 of the Commission’s rules, which governs the overall accounting methodology for the calculation of rural LEC study area loop costs, currently allows rural LECs to include “corporate operations expenses” in the calculation of those loop costs.²¹ Unlike the other factors included in the study area loop cost calculations – such as “equipment” and “maintenance expenses” – the “corporate operations expenses” category is aimed at the recovery of general expenses that are not related to the provision of the nine core services for which Universal Service support is intended.²² Accordingly, the Joint Board should recommend that the Commission either delete the provision of Section 36.621 that allows recovery of “corporate operations expenses” in the calculation of loop costs or, at the very least, substantially reduce “corporate operations expense” recovery to levels that can be justified by the recipient as directly supporting the provision of core services.

²⁰ See 47 U.S.C. § 241(e)(1)(A) (ETCs shall “offer the services that are supported by Federal universal service support mechanisms under Section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier’s services”); 47 C.F.R. § 54.101(a) (listing the nine core services that are supported with Universal Service Funds).

²¹ 47 C.F.R. § 36.621(a)(4).

²² See *id.*

C. The Joint Board Should Recommend Changes to the Threshold for Local Switching Support

The Notice also requests comment on the “local switching support mechanism (LSS).”²³ Specifically, the Notice requests comment on whether the “LSS mechanism [should] take switching costs into account,” and whether “50,000 lines in service [is] an appropriate benchmark for eligibility for LSS.”²⁴ Under the Commission’s current rules, local switching support is provided to rural LECs with less than 50,000 lines in a study area. However, many rural LECs (or rural LEC holding companies) have more than a single study area in a particular state, mainly due to the fact that they acquired exchanges from other incumbent LECs, and these disparate study areas were not consolidated into a single statewide study area. In addition, some LECs appear to be engaging in regulatory arbitrage by ensuring that their access lines in a state are divided among numerous study areas so that the local switching support for study areas where a carrier has less than 50,000 supported lines can be maintained in as many study areas as possible. Such regulatory arbitrage was likely not intended by the Commission and does not serve the public interest. Accordingly, Nextel urges the Joint Board to revisit the rules governing local switching support, and recommend that the Commission lower the threshold for receiving such support from the current level of 50,000 lines in a study area to a lower number – not greater than 25,000 lines in a study area – as a way of limiting arbitrage opportunities.²⁵ To the extent that certain carriers are above that limit, and have much

²³ Notice at 15, ¶ 46.

²⁴ *Id.*

²⁵ Nextel’s research shows that “rural” LECs currently receive local switching support in at least 33 study areas with between 25,000 and 50,000 lines. In 2004, the total cost of that local switching support was projected to be approximately \$27 million.

higher-than-average switching costs, the Joint Board may also want to consider a “safety valve” mechanism that will allow those carriers to receive some switching support, while continuing to minimize arbitrage opportunities.

IV. THE JOINT BOARD SHOULD ALSO TAKE THIS OPPORTUNITY TO BEGIN LOOKING AT MORE FUNDAMENTAL LONG-TERM SOLUTIONS

In addition to the changes delineated above that should be implemented upon the expiration of the Rural Task Force plan on June 30, 2006, Nextel also urges the Joint Board to begin studying and recommending certain long-term strategies for maintaining the stability and sufficiency of the High-Cost Fund. Among the changes the Joint Board should explore are:

- Transitioning all remaining incumbent LECs to a unified forward-looking High-Cost support mechanism. Under this proposal, the five separate High-Cost support mechanisms would be brought together under one, unified mechanism that could be administered by the Universal Service Administrative Company (“USAC”).
- Study the possibility of developing a High-Cost subsidy that flows directly to the consumer. Under this option, a consumer would receive a set amount of funds, and would be able to pick the ETC in an area that offers the most efficient and cost-effective package that meets his or her needs.

Of the 33 study areas receiving such support, at least 6 were held by CenturyTel, Inc. – a large rural LEC holding company. In addition, a Regional Bell Operating Company (Qwest) was also receiving local switching support in at least 1 study area. *See* Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter of 2004, at Appendix HC05 and HC07 (filed April 30, 2004). This appears to indicate that the current rules are too broad, and allow local switching support to flow to carriers that do not have higher than average switching costs.

V. ANY HIGH-COST REFORMS RECOMMENDED BY THE JOINT BOARD MUST PRESERVE COMPETITIVE AND TECHNOLOGICAL NEUTRALITY

In addition to seeking comment on the specific models that should be utilized to calculate support, the Notice also requests comment on how this support should be allocated in areas with competition.²⁶ Specifically, the Notice requests comment on “whether, if multiple carriers are supported, the competitive ETC should receive support based on its own costs, the incumbent’s costs, the lesser of its own or the incumbent’s costs, or some other estimate of its costs.”²⁷

As Nextel has stated in previous comments, any Joint Board recommendations regarding the basis or level of support reached in this proceeding should treat providers equally, regardless of the technology that they use. During the course of its deliberations, the Rural Task Force noted that, “Section 254(b) and 214(e) of the 1996 Act provide the statutory framework for a system that encourages competition while preserving and advancing universal service.”²⁸ The Joint Board is well aware of Section 254’s statutory mandate, as reflected by the Commission’s statement in the *First Report and Order* that “universal service mechanisms and rules” should “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”²⁹ This concept was reiterated in the *Ninth Report and Order*,

²⁶ Notice at 12, ¶ 36.

²⁷ *Id.*

²⁸ Rural Task Force, White Paper 5: Competition and Universal Service, at 8 (rel. Sept. 2000) (available at <http://www.wutc.wa.gov/rtf>).

²⁹ First Report and Order, 12 FCC at 8801 (1997).

where the Commission stated that “The same amount of support . . . received by an incumbent LEC should be fully portable to competitive providers.”³⁰

In addition, the courts have also held that portability and competitive neutrality are compelled by the language of Section 254, as well as the overall purpose of the 1996 Act. In *Allenco Communications v. FCC*, the U.S. Court of Appeals for the Fifth Circuit stated that the Universal Service “program must treat all market participants equally – for example, subsidies must be portable – so that the market, and not local or federal regulators, determines who shall compete for and deliver services to consumers.”³¹ Furthermore, the Fifth Circuit also noted that the most critical aspect of the Universal Service program in a competitive environment is “to benefit the consumer, not the carrier” receiving the subsidy.³²

All of Nextel’s proposed reforms – including long-term reforms that focus on targeting support to the most efficient technology or directly to the consumer – follow the strictures of Section 254, which require technological and competitive neutrality among providers. The proposals discussed in the Notice that discuss discriminatory funding allocations – such as providing competitive ETCs with the “lesser of its own or the incumbent’s costs” – violate Section 254 on its face.³³ Accordingly, such discriminatory and non-competitively neutral proposals must be rejected.

³⁰ *Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd 20432, 20479 (1999) (hereinafter “Ninth Report and Order”).

³¹ 201 F.3d 608, 616 (5th Cir. 2000).

³² *Id.* at 621.

³³ Notice at 12, ¶ 36.

VI. THE JOINT BOARD SHOULD ALSO RECOMMEND THAT THE COMMISSION SLIGHTLY MODIFY THE DEFINITION OF “RURAL” FOR UNIVERSAL SERVICE PURPOSES

The Notice also seeks comment on “whether the Commission should continue to use the statutory definition of ‘rural telephone company’ to determine which carriers are rural carriers for high-cost universal service purposes.”³⁴ Under the current definition, a company is considered “rural” if it: 1) provides service to any study area that does not include “[an]y incorporated place of 10,000 inhabitants or more, or any part thereof” as determined by Census Bureau statistics or “any territory, incorporated or unincorporated, included in an urbanized area” as defined by the Census Bureau on August 10, 1993;³⁵ 2) provides service to fewer than 50,000 lines;³⁶ 3) provides service in a study area with fewer than 100,000 lines;³⁷ or 4) has less than 15 percent of its lines in communities with more than 50,000 people on February 8, 1996.³⁸

In the Notice, the Joint Board states that “approximately 40 companies serving study areas with more than 100,000 access lines, including one company serving over 2 million access lines, self-certified as rural carriers under subsection 3(37)(D),” and also noted that many of these companies are “holding companies.”³⁹ Nextel believes that these statistics indicate that the use of language mirroring Section 3(37)(D) results in too broad a definition of “rural” for the purposes of receiving High-Cost support. To the

³⁴ Notice at 4, ¶ 8.

³⁵ 47 U.S.C. § 153(37)(A).

³⁶ 47 U.S.C. § 153(37)(B).

³⁷ 47 U.S.C. § 153(37)(C).

³⁸ 47 U.S.C. § 153(37)(D).

³⁹ Notice at 4-5, ¶ 8.

extent that a company is truly “rural,” and deserving of High-Cost support, it should be able to qualify for “rural” status under subsections 3(37)(A)-(C). Instead, it appears that many companies are taking advantage of subsection 3(37)(D) and self-certifying study areas that do not fit any of the traditional characteristics of either “rural” or “high-cost” areas. Accordingly, Nextel believes that the Joint Board should recommend that the Commission remove the provision mirroring subsection 3(37)(D) of the Act from the Commission’s definition of “rural” for the purposes of receiving High-Cost support.

CONCLUSION

For the aforementioned reasons, Nextel urges the Joint Board to recommend adoption of the High-Cost support mechanisms and rural definitional changes delineated herein.

Respectfully submitted,

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